

## NONDISCLOSURE AGREEMENT

This Agreement is entered into as of \_\_\_\_\_, 2011, by and between \_\_\_\_\_  
\_\_\_\_\_ (“Contractor”) and the State of Delaware (“State”).

“Proprietary Information” means information disclosed during the term of this Agreement that is not generally known and is proprietary to the State, or that the State is obligated to treat as proprietary. Proprietary Information shall include, but not be limited to: specifications and information about the State’s past, current or possible future employee, retiree and pensioner health plans; financial information or projections; non-public personal information, including protected health information and de-identified health information; including information obtained from third parties under nondisclosure agreements.

**“Purpose of the Disclosure”: Review of census and discount/disruption data related to the State of Delaware’s Group Health Insurance Program (GHIP) for the purpose of responding to a Request for Proposal (RFP) for medical benefit administrative services of the State’s medical plans: First State Basic, PPO and Port Authority Plan, collectively “PPO Plan”; Health Maintenance Organization (HMO); Consumer Directed Health Plan (CDHP), and Medicare Supplement.**

The parties hereby agree as follows:

1. **Property of State.** All right, title and interest in and to the Proprietary Information shall be and remain vested in the State. Nothing in this Agreement shall grant the Contractor any license or right of any kind with respect to the Proprietary Information, other than to review and evaluate such information solely for the Purpose of the Disclosure set forth above. All Proprietary Information is provided on an “AS IS” basis; and all representations and warranties, express or implied, are hereby disclaimed.
2. **Contractor’s Obligations.** Contractor agrees that it will: (a) use commercially reasonable efforts to safeguard the Proprietary Information, and to prevent any unauthorized access, reproduction, disclosure, or use of any of the Proprietary Information other than for the Purpose of the Disclosure and then only in strict compliance with the provisions hereof and subject to any applicable laws; (b) disclose the Proprietary Information only to those officers, directors, employees, consultants and advisors of the Contractor who need to know such information in order to carry out the Purpose of the Disclosure and, in the event the employment or engagement of any such person is terminated, the Contractor agrees to use commercially reasonable efforts to recover any Proprietary Information in such person’s custody or control; (c) not remove any copyright notice, trademark notice, or other proprietary legend or indication of confidentiality set forth on or contained in any of the Proprietary Information; and (d) promptly notify the State in writing of any unauthorized use or disclosure of the Proprietary Information, including a detailed description of the circumstances of the disclosure and the parties involved. In the event that Contractor is required to disclose any portion of any Proprietary Information received from the State by operation of law, Contractor may do so, provided the Contractor shall immediately notify the State in writing and Contractor shall provide the State with reasonable cooperation and assistance in obtaining a suitable protective order, and in taking any other steps reasonably necessary, to preserve the confidentiality of any such Proprietary Information.

3. **Exceptions.** Notwithstanding the provisions of Section 2 above, Contractor has no obligation to maintain the confidentiality of any Proprietary Information which: (a) Contractor can demonstrate was known by Contractor without violation of any contractual, fiduciary or other obligation of confidentiality prior to the disclosure thereof by the State; (b) properly came into the possession of Contractor from a third party which was not under any obligation to maintain the confidentiality of such information; (c) has become available to members of the public through no act or fault on the part of Contractor in breach of this Agreement; or (d) Contractor can demonstrate that it was independently developed by or for Contractor without the use of Proprietary Information.
4. **Term.** Contractor's obligations hereunder with respect to Proprietary Information disclosed by the State shall apply to all Proprietary Information provided to Contractor by State with respect to the Purpose of Disclosure terminate upon the Contractor's certification to the State that Contractor has returned or destroyed all Proprietary Information and has not retained any copies thereof.
5. **Equitable Relief.** Contractor agrees that any unauthorized use of the Proprietary Information by Contractor shall cause the State irreparable harm for which its remedies at law would be inadequate. Therefore, in addition to any other rights it may have at law, the State shall be entitled to seek equitable relief.
7. **General.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the Proprietary Information listed above, and supersedes all prior and contemporaneous negotiations, discussions and understandings of the parties, whether written or oral. No waiver or modification of any of the provisions of this Agreement shall be valid unless in writing and signed by both of the parties. Contractor's rights under this Agreement may not be assigned to any third party without the State's prior written consent. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware. Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court of competent jurisdiction, such determination shall not affect the remaining provisions hereof, which shall remain in full force and effect.

**CONTRACTOR**

\_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

**STATE OF DELAWARE**

  
\_\_\_\_\_

Authorized Signature

Name: BRENDA L. LAKEMAN

Title: DIRECTOR, STATEWIDE BENEFITS  
OFFICE

Address:

Office of Management and Budget

Statewide Benefits Office

500 West Loockerman Street, Suite 320

Dover, DE 19904